IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1212 OF 2006

Mr. Cedric Vaz and anr. ..Applicants.
Vs.
State of Maharashtra. ..Respondent.

Mr. Shirish Gupte, Sr. Advocate with Mr. Kirti Parekh i/by M/s. P.J. Ranga Advocate for the Applicants.

Mrs. G.P. Mulekar, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 10/4/2006.

P.C.

1. This is an application for quashing Criminal Case No.534/S/2003 pending before the Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai and for quashing and setting aside the order issuing process which has been passed on 5.12.2003.

2. The point which is sought to be raised in this application is that only one living larva was found on the surface of the chocolate. It is sought to be argued that even if this was factually accepted situation, the food could not be said to be adulterated within the meaning of Section 2(i-a)(f) of the Prevention of Food Adulteration Act, 1954. My attention was drawn to a judgment of the Single Judge of this court in the case

of Jivraj Virchand Vs. Bhimrao Gurapa and another reported in 1979(1) FAC Page 297, where a view has been taken that the words the phrase "or is otherwise unfit for human consumption" is conjunctive. However, thereafter, the Apex Court in the case of Municipal Corporation of Delhi Vs. Tek Chand Bhatia took a contrary view. Yet another view taken by the Apex Court is in consonance with the view taken by the Single Judge of this court and that view has been taken in the case of State (Delhi Administration) Vs. Puran Mal reported in A.I.R. 1985 S.C. Page 741.

3. In my view, in all the aforesaid cases, the view was taken after evidence was led and the trial was concluded on merits. I am not required to decide the aforesaid question. Even assuming that such express wording is missing in the report of Public Analyst, it is always open for the prosecution to put the said Public Analyst in the witness box and lead his evidence to show that the food in question was not fit for human consumption. It was sought to be argued that such evidence of the Public Analyst will carry no weight as he will be confronted with the omission in his certificate. That, however, is a question of veracity and weight to be given. It cannot be a ground for quashing proceeding itself. The order issuing process has been passed on

5.12.2003 and there is gross delay in approaching this court. I am however, inclined to grant the request made on behalf of the applicants that the applicants will be granted general exemption subject to right of the trial court to summon the applicant if their presence is found necessary during the trial. The learned A.P.P. contended that such an order can be passed so that interest of justice can be served. In the circumstances, application is rejected subject to a direction that the applicants are granted general exemption from appearing in the trial court unless their presence is required for the trial court during the trial. It will be open for the trial court to secure the presence of the applicant by summoning the applicants, if need arises. With the above directions, petition is disposed off.

(R. S. MOHITE, J.)